

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CARLA CAIN

(b) County of Residence of First Listed Plaintiff PHILADELPHIA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C.
30 EAST BUTLER PIKE, AMBLER, PA 19002
PHONE: (215) 540-8888 EXT. 116

DEFENDANTS

PORTFOLIO RECOVERY ASSOCIATES, LLC, a wholly-owned subsidiary of
PORTFOLIO RECOVERY ASSOCIATES, INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seq.

Brief description of cause:

FAIR DEBT COLLECTION PRACTICES ACT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/13/2015

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 833 East Dorsett Street, Philadelphia, PA 19119

Address of Defendant: 120 Corporate Boulevard, Norfolk, VA 23502

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 15 U.S.C. § 1692 et seq.

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, CRAIG THOR KIMMEL, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 10-13-15

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10-13-15

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

CARLA CAIN

v.

PORTFOLIO RECOVERY ASSOCIATES,
LLC

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

10-13-15
Date


Attorney-at-law

Plaintiff, Carla Cain
Attorney for

215-540-8888 x 116

877-788-2864

kimmel@creditlaw.com

Telephone

FAX Number

E-Mail Address

(Unlawful Debt Collection Practices)

1 States district court without regard to the amount in controversy,” and 28 U.S.C. §
2 1331, which grants this court original jurisdiction of all civil actions arising under
3 the laws of the United States.

4 3. Defendant conducts business in the Commonwealth of Pennsylvania;
5 therefore, personal jurisdiction is established.
6

7 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).
8

9 PARTIES

10 5. Plaintiff is a natural person residing in Philadelphia, Pennsylvania.

11 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
12 1692a(3).

13 7. In the alternative, Plaintiff is a person granted a cause of action
14 under the FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S.
15 Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).
16

17 8. Defendant is a corporation with its principal place of business
18 located at: 120 Corporate Boulevard in Norfolk, Virginia, 23502.
19

20 9. At all times material hereto, Defendant acted as a “debt collector”
21 within the meaning of 15 U.S.C. § 1692(a)(6), and attempted to collect a “debt” as
22 defined by 15 U.S.C. § 1692(a)(5).
23

24 10. Portfolio Recovery Associates, Inc., through its wholly-owned
25 subsidiary, Portfolio Recovery Associates, LLC, purchases, manages and collects

1 debts.

2 11. Defendant acted through its agents, employees, officers, members,
3 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
4 representatives, and insurers.

5
6 **FACTUAL ALLEGATIONS**

7 12. At all relevant times herein, Defendant was attempting to collect an
8 alleged consumer debt and contacted Plaintiff in its attempts to collect that debt.

9 13. Plaintiff never incurred any debt in connection with a business or
10 commercial activities, and therefore, the debt if truly an obligation owed by her,
11 could have only arisen from financial obligations primarily for personal, family,
12 or household purposes.

13
14 14. Between January 2015 and July 2015, Defendant continuously and
15 repeatedly contacted Plaintiff on her cellular telephone in its attempts to collect a
16 consumer debt.

17
18 15. Frustrated by the repeated calls and lack of information, Plaintiff told
19 Defendant to stop calling her in late January 2015.

20
21 16. In response, Defendant's collector told Plaintiff, "We'll take you off
22 the calling list".

23 17. Despite Plaintiff's request and its statement to take her off the calling
24 list, Defendant continued to call Plaintiff.
25

1 18. Each time Plaintiff answered Defendant's calls, she told them to stop
2 calling her.

3 19. During one conversation, Defendant got angry at Plaintiff and told
4 her "this is your damn debt!"

5 20. Further, Defendant attempted to intimidate and humiliate Plaintiff by
6 demeaning her with words implying that non-payment was disgraceful.

7 21. Also, Defendant threatened to garnish Plaintiff's wages.

8 22. In Pennsylvania, a person's wages cannot be garnished to satisfy a
9 debt.
10

11 23. Therefore, not only did Defendant not intend to take the action it
12 threatened, but it legally could not take the threatened action.
13

14 24. In addition, Defendant would call Plaintiff at times when it was
15 inconvenient for her to receive collection calls.
16

17 25. Specifically, Defendant would call Plaintiff before 8:00 a.m. and
18 after 9:00 p.m.
19

20 26. Most recently, on July 30, 2015, Defendant called Plaintiff eight (8)
21 times on her cellular telephone.

22 27. Once Defendant was aware that its calls were unwanted, there was no
23 purpose for further calls, other than harassment.
24
25

1 28. Defendant's actions as described herein were taken with the intent to
2 abuse, harass, and deceive Plaintiff.

3 29. Defendant failed to properly validate the alleged debt within 5 days
4 after the initial communication by sending the Plaintiff written notice containing
5 the amount of debt, name of creditor, a statement that unless the Plaintiff within
6 thirty days after receipt of the notice, disputes the validity of the debt that the debt
7 will be assumed to be valid, that the debt collector will obtain verification of the
8 debt or inform Plaintiff of her rights to request within thirty days, provide her with
9 the name and address of the original creditor.
10

11
12 **COUNT I**
13 **DEFENDANT VIOLATED §§ 1692c(a)(1) OF THE FDCPA**

14 30. A debt collector violates § 1692c(a)(1) of the FDCPA by
15 communicating with a consumer in connection with the collection of any debt at
16 any unusual time or place or a time or place known or which should be known to
17 be inconvenient to the consumer. In absence of knowledge of circumstances to
18 the contrary, a debt collector shall assume that the convenient time for
19 communicating with a consumer is after 8:00 a.m. and before 9:00 p.m., local
20 time at the consumer's location.
21

22
23 31. Here, Defendant violated § 1692c(a)(1) of the FDCPA when it called
24 Plaintiff before 8:00 a.m. and after 9:00 p.m.
25

COUNT II
DEFENDANT VIOLATED §§ 1692d and 1692d(5) OF THE FDCPA

32. A debt collector violates § 1692d by engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

33. A debt collector violates § 1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

34. Defendant violated §§ 1692d and 1692d(5) when it placed repeated harassing telephone calls to Plaintiff's telephone number and continued to call Plaintiff after being told to stop calling.

COUNT III
DEFENDANT VIOLATED §§ 1692e, e(5) and 1692e(10) OF THE FDCPA

35. A debt collector violates § 1692e by using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

36. A debt collector violates § 1692e(5) of the FDCPA by threatening to take any action that cannot legally be taken or has not intention of being taken.

37. A debt collector violates § 1692e(10) by using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

1 38. Here, Defendant violated §§ 1692e, 1692e(5), and 1692e(10) of the
2 FDCPA by threatening to take legal action against Plaintiff as well as threatening
3 to garnish Plaintiff's when it had no intention of doing so and did not have the
4 legal authority to do so.

5
6 **COUNT IV**
7 **DEFENDANT VIOLATED §1692f OF THE FDCPA**

8 39. A debt collector violates § 1692f by using unfair or unconscionable
9 means to collect or attempt to collect any debt.

10 40. Defendant violated § 1692f when it failed to update its records to
11 cease all calls to the cell phone as well as made demeaning remarks to Plaintiff,
12 including telling her that it was her, "damn debt."

13
14 **COUNT V**
15 **DEFENDANT VIOLATED §§1692g(a) OF THE FDCPA**

16 41. A debt collector violates § 1692g(a) if within five days after the initial
17 communication with a consumer, the debt collector fails to send the consumer a
18 written notice containing (1) the amount of the debt; (2) the name of the creditor
19 to whom the debt is owed; (3) a statement that unless the consumer, within thirty
20 days after receipt of the notice, disputes the validity of the debt, or any portion
21 thereof, the debt will be assumed to be valid by the debt collector; (4) a statement
22 that if the consumer notifies the debt collector in writing within the thirty-day
23 period that the debt, or any portion thereof, is disputed, the debt collector will
24
25

1 obtain verification of the debt or a copy of a judgment against the consumer and a
2 copy of such verification or judgment will be mailed to the consumer by the debt
3 collector; and (5) a statement that, upon the consumer's written request within the
4 thirty-day period, the debt collector will provide the consumer with the name and
5 address of the original creditor, if different from the current creditor.
6

7 43. Here, Defendant violated § 1692g(a) by failing to send written
8 notification, within five (5) days after its initial communication with Plaintiff,
9 advising her of her rights to dispute the debt or request verification of the debt.
10

11 WHEREFORE, Plaintiff, CARLA CAIN, respectfully prays for judgment
12 as follows:

- 13 a. All actual damages suffered pursuant to 15 U.S.C. §
14 1692k(a)(1);
15
16 b. Statutory damages of \$1,000.00 for the violation of the
17 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
18
19 c. All reasonable attorneys' fees, witness fees, court costs and
20 other litigation costs, pursuant to 15 U.S.C. § 1693k(a)(3); and
21
22 d. Any other relief deemed fair and proper by this Honorable
23 Court.
24
25

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, CARLA CAIN, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

DATE: 10-14-15

By: 
CRAIG THOR KIMMEL
Attorney ID # 57100
Kimmel & Silverman, P.C
30 East Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888 ext. 148
Facsimile (877) 788-2864
Email: kimmel@creditlaw.com